UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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YAFREXI LOMBERT,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER VICENTE FERNANDEZ, POLICE OFFICERS JOHN DOES 1-3,

Defendants.

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ECF CASE

COMPLAINT

07 CV 5688 (MGC) (HBP)

Jury Trial Demanded

PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiff seeks relief for the violation of her rights secured by 42 U.S.C. § 1983, the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution, and the laws of the State of New York. This case arises from a April 26, 2007 incident in which several members of the New York City Police Department ("NYPD") subjected plaintiff to an illegal entry and search of her home, false arrest, excessive force, assault, battery, trespass, and fabrication of evidence. Plaintiff seeks compensatory and punitive damages, declaratory relief, an award of costs and attorneys' fees, and such other and further relief as the court deems just and proper.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by the aforesaid statutes and 28 U.S.C. §§ 1331 and 1343.

3. Plaintiff invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide her state law claims of false arrest, assault, battery, trespass,

and negligence. With respect to these state law claims, a notice of claim was duly filed on the City of New York within 90 days of the incident, more than 30 days have elapsed since such filing, and the City has refused to settle plaintiff's state law claims.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because defendant City of New York is subject to personal jurisdiction in the Southern District of New York. Moreover, venue is proper pursuant to 28 U.S.C. § 1391(b) because the City of New York's negligence and deliberate indifference to plaintiff's rights under federal and state law took place in this district, specifically at NYPD Headquarters located at One Police Plaza, and at the office of the Civilian Complaint Review Board located at 40 Rector Street.

PARTIES

5. Plaintiff is a resident of the State of New York.

6. The City of New York is a municipal corporation organized under the laws of the State of New York.

7. Police Officer Vicente Fernandez is a member of the NYPD who was involved in the arrest of plaintiff, and the events arising out of plaintiff's arrest, on April 26, 2007. Fernandez is liable for directly participating in the acts described herein and for failing to intervene to protect plaintiff from the illegal conduct of his fellow officers.

8. Police Officers John Does 1-3 are members of the NYPD who were involved in the arrest of plaintiff, and the events arising out of plaintiff's arrest, on April 26, 2007. John Does 1-3 are sued in their individual capacities.

STATEMENT OF FACTS

9. On April 26, 2007, at approximately 12:35 p.m., four police officers in uniform, including Officer Vicente Fernandez, unlawfully entered plaintiff's home located at 63 Irving Avenue, Apt. 1R, Brooklyn, New York.

10. Fernandez and his fellow officers arrested plaintiff solely because she was taking pictures of Fernandez and the other officers assaulting the father of her child, Joel Casillas, who was in plaintiff's residence at the time.

11. One of the police officers, who plaintiff believes is a sergeant, pushed plaintiff, ordered her to put down the camera, and erased the pictures that plaintiff had taken.

12. Plaintiff was subsequently handcuffed excessively tight causing marks on plaintiff's wrists and interfering with plaintiff's circulation.

13. Fernandez and the other officers then took plaintiff to the 83rd Precinct for arrest processing.

14. At the 83rd Precinct, Fernandez and the other officers falsely charged plaintiff with obstruction of governmental administration in the second degree.

15. At the 83rd Precinct, plaintiff suffered an asthma attack and was taken to Woodhull Hospital for treatment.

16. On April 28, 2007, at approximately 1:00 p.m., plaintiff was taken to Brooklyn Central Booking for further arrest processing and to await arraignment.

17. Plaintiff was arraigned in Brooklyn Criminal Court during the evening of April 28, 2007.

18. The false charges filed against plaintiff were adjourned in contemplation of dismissal.

19. As a result of defendants' actions, plaintiff experienced pain and physical injuries to her wrists and body, emotional distress, fear, embarrassment, humiliation, discomfort, loss of liberty, damage to reputation, and loss of her house keys.

FEDERAL CLAIMS AGAINST POLICE OFFICER VICENTE FERNANDEZ AND POLICE OFFICERS JOHN DOES 1-3

20. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-19 as if fully set forth herein.

21. The conduct of Police Officer Vicente and Police Officers John Does 1-3, as described herein, amounted to an illegal entry and search of plaintiff's home, false arrest, excessive force, and fabrication of evidence. This conduct violated plaintiff's rights under 42 U.S.C. § 1983 and the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution.

STATE LAW CLAIMS AGAINST POLICE OFFICER VICENTE FERNANDEZ AND POLICE OFFICERS JOHN DOES 1-3

22. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-21 as if fully set forth herein.

23. The conduct of Police Officer Vicente and Police Officers John Does 1-3, as described herein, amounted to false arrest, assault, battery, trespass, and negligence in violation of the laws of the State of New York.

FEDERAL CLAIM AGAINST THE CITY OF NEW YORK

24. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-23 as if fully set forth herein.

25. The City of New York directly caused the constitutional violations suffered by plaintiff.

26. Upon information and belief, the City of New York, at all relevant times herein, was aware from notices of claim, lawsuits, complaints filed with the City, and from the City's own observations, that its police officers, including the individual defendants, are unfit, ill-tempered officers who have the propensity to commit the acts alleged herein. Nevertheless, the City of New York exercised deliberate indifference by failing to take remedial action. The City failed to properly train, retrain, supervise, discipline, and monitor the officers and improperly retained and utilized them. Moreover, the City of New York failed to adequately investigate prior complaints against the officers.

27. The aforesaid conduct by the City of New York violated plaintiff's rights under 42 U.S.C. § 1983 and the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution.

STATE LAW CLAIMS AGAINST THE CITY OF NEW YORK

28. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-27 as if fully set forth herein.

29. Because the individual defendants were acting within the scope of their employment as members of the NYPD during the incident in question, the City of New York is vicariously liable under state law for the false arrest, assault, battery, trespass, and negligence committed by the officers.

30. Further, the City of New York is liable under state law because it negligently hired, trained, supervised, and retained the individual defendants.

WHEREFORE, plaintiff demands a jury trial and the following relief jointly and severally against the defendants:

a. Compensatory damages in an amount to be determined by a jury;

b. Punitive damages in an amount to be determined by a jury;

c. Costs, interest and attorney's fees;

d. Such other and further relief as this Court may deem just and proper, including injunctive and declaratory relief.

DATED: June 14, 2007
Brooklyn, New York

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By:

s/
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RICHARD J. CARDINALE (RC-8507)